must also be allowed.

There will, therefore, be an order that the convictions on both charges be quashed, the sentences set aside and the fines, if paid, be refunded to the appellant. Any endorsement made on the licence should, therefore, be expunged.

Appeal allowed.

Solicitors: *Goh Bin Lay & Co.*

PUBLIC PROSECUTOR v. LEE AH KEH & ORS.

[A.Cr.J. (Ali J.) July 29, 1967]

[Johore Bahru — Criminal Revision No. 1 of 1967]

Contempt of Court — Subordinate court — Summary power to deal with — Identity of persons responsible — Procedure to be followed — Oaths and Affirmations Ordinance, 1949, s. 12(1) — Criminal Procedure Code (Cap. 6), s. 353 — Courts Ordinance, 1948, 3rd Schedule para. 24.

Criminal Law and Procedure — Contempt of court — Summary powers to punish — Right of accused to shew cause before sentence.

On July 16, 1967 in the magistrate's court at Pontian 57 persons represented by counsel were brought to the court jointly charged for being members of an unlicenced procession. Before going on the bench the magistrate heard singing and shouting in the court room.

While on the bench he appealed for calm through a Chinese interpreter addressed to all present in the court room. When the charge was being read out to the 57 persons noise was again heard. Again in the same manner the magistrate called for calm and ordered those who had been shouting to leave the court room. A missile was thrown at the bench by someone at the back of the court and persons stood on benches in the gallery and generally the noise continued. Failing to obtain calm the magistrate ordered the doors of the court to be closed and summarily ordered those found in the court, including the accused persons, to be committed to prison for contempt. On revision,

Held: (1) there was no doubt that the behaviour of the crowd in the court room constituted contempt of a criminal nature and any person guilty of it should be appropriately punished according to law;

(2) as the law in this country does not recognize group punishment, it is essential that their identities should be established to the satisfaction of the court, and before committing them for contempt each and every one of them should be given the opportunity to be heard.

Observations on the procedure which should be followed by a subordinate court when contempt is committed in its view or presence.

Per Curiam: Under section 353 of the Criminal Procedure Code (Cap. 6) and under paragraph 24 of the Third Schedule to the Courts Ordinance, 1948 the magistrate's court has power to take cognizance of any act which amounts to contempt and to exercise the summary power of punishment. To take cognizance of an offence is to deal with the matter as an offence without the formality of a charge or complaint. But this does not mean that the offender is not to be given the opportunity to be heard in his defence. To deny him this opportunity is to offend against the rule of natural justice.

Cases referred to:—

(1) *In re Pollard* (1868), 5 Moore N.S., 111.

(2) *Chang Hang Kiu & Ors.* v. *Sir Francis T. Piggott & Anor.* [1909] A.C. 312.

CRIMINAL REVISION.

T. T. Rajah for the applicants/accused.

Abdul Kadir bin Haji Kassim (Deputy Public Prosecutor) for the Public Prosecutor.

Cur. Adv. Vult.

Ali J.: This matter came by way of criminal revision under section 323 of the Criminal Procedure Code (Cap. 6) of an order made by the magistrate, Pontian, on 16th July, 1967, whereby 68 persons were committed to prison for one month without the option of a fine for contempt alleged to have been committed in the face of the court. My attention was drawn to the matter by a letter dated 16th July, 1967, from an advocate and solicitor, Mr. T. T. Rajah, who in invoking the revisionary power of the court stated, *inter alia,* that the order made was illegal. The record of the case was called for forthwith. It appears from this that at 10.10 a.m. on the 16th July, 1967, while the magistrate's court was in session in Pontian something had happened. The record states as follows:—

"Accused present.

Mr. T. T. Rajah for accused.

Chief Insp. Harbans Singh for prosecution.

Chaos in court.

Persons in the audience (behind the dock) convicted and sentenced to 1 month's imprisonment for contempt of court.

Court adjourned.

Sd. Hassan Ishak
16.7.67"

It would appear that on the day in question 57 persons had been brought to the court jointly charged with an offence under section 39(5)(a) of the Police Ordinance, 1952, for being members of an unlicensed procession and Mr. T. T. Rajah was acting as counsel for all the accused. At 11 a.m. on the same day when the court resumed its sitting Mr. Rajah applied for a stay of execution of the committal order for contempt. This was refused by the court. Although it is not clearly stated in the record it would seem to me that the order committing for contempt applied not only to "persons in the audience (behind the dock)" as recorded at 10.10 a.m. but also to the 57 accused persons who had been brought on the procession charge. That is to say, besides the 57 accused persons 11 others had been committed for contempt. Upon reading this record I decided to hear counsel on this matter and at the same time in the exercise of powers conferred by section 311 of the Criminal Procedure Code ordered that the committal order be stayed upon condition that each of the persons

committed executes a personal bond in the sum of $50 to appear in court when called upon to do so. Shortly after this the grounds of judgment was received from the magistrate in which the circumstances leading to the order were fully stated. As the incident occurred in his presence I accept the fact stated by the learned magistrate to be the unbiassed truth. According to him shortly before going up to the bench he heard shouting and singing in the court room. While on the bench he appealed for calm. This was interpreted by the Chinese interpreter to all who were present in court. Apparently there was some response to this but when the charge was being read out to the 57 accused noise was again heard. The magistrate again through the interpreter asked those in court to calm down and ordered those who had been shouting to leave the court room. This provoked more shouting and the magistrate saw some persons standing on the benches in the gallery. He also saw a flying grey object being thrown towards the bench, but fortunately this landed on the front wall of the bench. The magistrate again asked those who shouted to leave the court room but none seemed to have listened to him. He thereupon caused the doors of the court room to be closed and summarily ordered those found in the court, including the accused persons, to be committed to prison for contempt.

In view of what had happened it is not at all surprising that the record of this case has been somewhat meagre in the sense that it did not fully state the facts of the case. It would be easy for me sitting in the comparatively calm atmosphere of the High Court to be wise after the event. I can only regard this as an exceptional case in which if any error had been made it was because the situation rendered it difficult, if not impossible, to exercise self restraint. Turning to the behaviour of the crowd in the court room as described by the trial magistrate I have no doubt whatsoever that it constituted contempt of a criminal nature and that any person guilty of it should be appropriately punished according to law.

The most important question of all is whether each of the 68 persons committed for contempt had been clearly identified as being responsible for the riotous behaviour in court. In this connection the trial magistrate had said:—

"I had repeatedly asked those who shouted to leave the court room and on each occasion it was interpreted by the Chinese interpreter to them. None of them seemed to care to leave the court room. Apparently, those who did not shout need not therefore leave the court room as requested by me. But the fact remains that all the demonstrators continued shouting and making noise in the court room without making any attempt at all to leave it. It was humanly impossible for me to identify each of them in such an emergency and chaotic condition. Hence, I found all of them guilty of contempt. The doors of the court room were closed between the time I pronounced the sentence and the time the police took them away. The chances of other demonstrators or persons intruding into the court room is almost nil."

These words clearly suggest that the trial magistrate was not certain who among the crowd of persons in court that day were responsible for the disgraceful behaviour and therefore guilty of contempt. It is essential that their identities should be established to the satisfaction of the court for the law in this country does not recognize group punishment. It might well be that the trial magistrate was able to identify all the 57 accused persons as being guilty of contempt, but even if that was so the law requires that before committing them for contempt each and every one of them should be given the opportunity to be heard. This is the crux of the whole matter. Under section 353 of the Criminal Procedure Code and under paragraph 24 of the Third Schedule to the Courts Ordinance No. 43 of 1948 the magistrate's court has power to take cognizance of any act which amounts to contempt and to exercise the summary power of punishment. To take cognisance of an offence is to deal with the matter as an offence without the formality of a charge or complaint. But this does not mean that the offender is not to be given the opportunity to be heard in his defence. To deny him this opportunity is to offend against the rule of natural justice. This rule is reflected in the principle established in *In re Pollard,*[1] the headnote of which states:—

"A contempt of court being a criminal offence, no person can be punished for such unless the specific offence charged against him be distinctly stated, and an opportunity given him of answering."

This rule was later followed by the Privy Council in the case of *Chang Hang Kiu & Ors.* v. *Sir Francis T. Piggott & Anor.*[2] In the Privy Council case eight witnesses at the trial before the Chief Justice in the High Court of Hongkong were committed for contempt. Addressing the eight persons the learned Chief Justice is reported to have said:—

"The eight witnesses have to my mind been guilty of the most flagrant conspiracy to defraud the alleged partner, Wong Ka Chuen. They have each one been guilty of the most corrupt perjury, and in virtue of the provisions of the law which empowers me to deal at once with such cases I commit each of them to prison for three months without hard labour."

Lord Collins delivering the judgment of the board said at page 315 :—

"But though, in their Lordships' opinion, the language used by the Chief Justice was quite sufficiently specific to make the appellants aware of the pith of the charge against them, they think that the Chief Justice should, before sentencing them, have given them an opportunity of giving reasons against summary measures being taken."

Later at page 316 Lord Collins, referring to the case of *In re Pollard, supra,* said:—

"The report of this board in *In re Pollard, supra,* treats the giving of such opportunity as essential in

cases of committal for contempt of court."

So much about the principle of law that should generally apply in all cases of this nature.

Before departing I would like to say a few words on the procedure that should be followed by the subordinate court when faced with a situation similar to that described by the trial magistrate in this case. Section 353 of the Criminal Procedure Code and paragraph 24 of the Third Schedule to the Courts Ordinance while empowering the court to exercise summary power of punishment for contempt do not in so many words prescribe the procedure to be followed. Be that as it may I would advise magistrates to follow the procedure which is described in section 12(1) of the Oaths and Affirmations Ordinance No. 51 of 1949 which, in my opinion, clearly embodies the principle of law that should generally apply in cases of contempt. When contempt is committed in the view or presence of the court the first thing to do is to order the offender to be detained by the police and at the same time to record the act or statement constituting the contempt. The court can then proceed with its other business for the day. After completing other business but before rising the offender shall be produced again to be dealt with. If the magistrate decides to take cognisance of the contempt the act or statement constituting the contempt already recorded shall be read out to the offender who is then asked to show cause why he should not be punished. If, as in this case, one or more persons who were committed for contempt could satisfy the court that they were not in any way involved in or responsible for the shouting and singing which had interrupted court proceedings, they obviously could not be punished for contempt. On the other hand, if the magistrate decides not to take cognisance of the offence he may either order the offender to be released or authorise the prosecution under paragraph 24 of the Third Schedule to the Courts Ordinance.

In the case under review I am compelled to say that justice requires that I should exercise my revisionary power and set aside the committal order made against the 68 persons.

Committal order set aside.

PEARLSON ENTERPRISES LTD. v. HONG LEONG CO. LTD.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Buttrose J.) August 7, 1967]

[Singapore—Federal Court Civil Appeal No. Y. 38 of 1966]

Contract — Supply of bricks — Sole selling agents, by — Price agreed — Manufacturers' increase — Whether supplier entitled to pass on increased price — Purchaser refusing to accept increased price — Whether breach of contract.

The respondents who were the sole selling agents of a company manufacturing bricks sold to the appellants who were a building and developing company 600,000 pieces of bricks under a written contract dated June 18, 1964. The deliveries were to be made in instalments over a period of six months and payments for the instalment deliveries were to be made by certain stipulated due dates. The said written contract was subject to the general conditions printed on the back thereof except where inconsistent with special conditions specified.

These printed conditions whether they established that sellers (respondents) were merely agents of the manufacturers and not themselves liable or whether they had the effect of making them contract as principals, was the source of dispute. Also whether any increase in the price of bricks by the manufacturers at any time could be passed on to the buyers so as to be the determining price under the relevant clause of the written contract. Correspondence between the solicitors did little to clarify the dispute which came to a head; the respondents ceasing further supplies resorted to the court for claiming the price of bricks delivered while the appellants counterclaimed for damages for failure to deliver thereby compelling them to seek other sources of supply to carry on their building projects.

The sole issue at the trial of the action and counterclaim was whether it was the appellants or the respondents who were in breach of contract.

The trial judge gave judgment for the respondents on the claim and dismissed the counterclaim. On appeal by the defendants/appellants:—

Held: the contract was one between a vendor and a purchaser and not one between an agent on behalf of a principal and purchaser, it therefore, followed that the manufacturers' increase in price could not alter the price stipulated in the contract and be passed on to alter the contract price.

Appeal allowed. On counterclaim order made for retrial.

Case referred to:—

(1) *W. T. Lamb & Sons* v. *Goring Brick Co.* [1932] 1 K.B. 710.

FEDERAL COURT.

K. A. O'Connor for the appellants.

K. S. Chung for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal by appellants, Pearlson Enterprises Limited against a judgment of Winslow J. in the High Court in favour of the respondents, Hong Leong Company Limited for $11,575.45 and costs and dismissing the counterclaim of the appellants with costs. The facts which I shall attempt to set out as briefly as possible are these.

The respondents who are the sole selling agents of a company manufacturing *inter alia* bricks sold to the appellants who are a developing company building flats for sale or rental 600,000 pieces of bricks under a written contract in the following terms:—

"Singapore, 18th June, 1964.

Messrs. Pearlson Enterprises Ltd., of 18-L, Battery Road, Singapore (hereinafter called 'the buyers') hereby confirm having purchased this day from M/s. Hong Leong Co. Ltd. of Singapore, (hereinafter called 'the